

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
CASE NO. 7:25-mc-0001-M-BM

IN RE:

APPLICATION OF NOVO NORDISK,
A/S, FOR *EX PARTE* ORDER
PERMITTING DISCOVERY FOR USE
IN FOREIGN PROCEEDINGS

)
)
) **KBP BIOSCIENCES PTE. LTD.’S**
) **NOTICE OF INTENT TO FILE**
) **MOTION TO VACATE ORDER**
) **GRANTING 28 U.S.C. SECTION 1782**
) **APPLICATION AND QUASH**
) **SUBPOENAS**
)
)

Intervenor KBP Biosciences Pte. Ltd. (“KBP”) respectfully files this notice of its intent to file a motion to vacate the order granting Novo Nordisk A/S’s (“Novo” or “Applicant”) 28 U.S.C. Section 1782 application and quash the subpoenas served upon Respondent Dr. James McCabe (the “Subpoenas”).

On March 24, 2025, Novo filed an *ex parte* application in this Court pursuant to 28 U.S.C. Section 1782, seeking permission to issue documentary and testimonial subpoenas to Dr. McCabe. (Dkt. 1.) Novo claims that it needs such discovery from Dr. McCabe in order to maintain two worldwide freezing orders that it obtained, *ex parte*, against KBP and its Cayman Islands parent in order to secure an arbitration award that Novo believes will be forthcoming in its favor (“*Ex Parte* Worldwide Freezing Orders”). (*Id.*) The Court granted Novo’s application by order dated April 2, 2025 (“Order”). (Dkt. 9.)

On April 7, 2025, KBP moved to intervene in this action. (Dkt. 12.) As explained in KBP’s motion to intervene, Dr. McCabe consented to the intervention, but Novo did not. (*Id.*) However, during a meet and confer between counsel for Novo, KBP, and Dr. McCabe on April 28, 2025, counsel for Novo informed counsel for KBP, for the first time, that counsel for Novo had advised the Court that it did not oppose KBP’s intervention.

Subject to the grant of its uncontested motion to intervene, KBP will file a motion to vacate the Order and quash the Subpoenas, which will include the following grounds:

- (1) Novo's Section 1782 application contravenes the United States Supreme Court's ruling in *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 596 U.S. 619 (2022), which precludes the use of Section 1782 in connection with commercial arbitration.¹
- (2) The discovery sought in the Subpoenas will not have the claimed relevance, weight or admissibility in the courts presiding over the *Ex Parte* Worldwide Freezing Orders.
- (3) The discovery sought in the Subpoenas should be quashed under FRCP 45(d)(3)(A)(iv) (undue burden), FRCP 45(d)(3)(A)(iii) (disclosure of privileged or other protected matter), and FRCP 45(d)(3)(B)(i) (disclosure of a trade secret or other confidential research, development, or commercial information).

DATED: April 29, 2025

/s/ James P. McLoughlin, Jr.
James P. McLoughlin, Jr.
N.C. Bar No. 13795
Josh Lanning
N.C. Bar. No. 38858
Rashaad Hamilton
N.C. State Bar. No. 58275
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Telephone: (704) 331-1054
Facsimile: (704) 331-1159
jimmcloughlin@mvalaw.com
Local Civil Rule 83.1(d) Attorney

Elizabeth A. Hellmann (admitted via *special appearance*)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Manhattan West
New York, N.Y. 10001-8602
Telephone: (212) 735-3000
betsy.hellmann@skadden.com

Attorneys for Intervenor KBP Biosciences Pte. Ltd.

¹ In its motion to vacate/quash, KBP will provide to the Court the broad outline of the arbitrations pending between Novo and KBP. Per the email exchange attached as Exhibit 1-A hereto, Novo will not consent to sharing the parties' Requests for Arbitration with the Court.

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2025, I electronically filed the foregoing **KBP BIOSCIENCES PTE. LTD.'S NOTICE OF INTENT TO FILE MOTION TO VACATE ORDER GRANTING 28 U.S.C. SECTION 1782 APPLICATION AND QUASH SUBPOENAS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kelly Margolis Dagger
N.C. Bar No. 44329
ELLIS & WINTERS LLP
Post Office Box 33550
Raleigh, North Carolina 27636
Telephone: (919) 865-7000
Facsimile: (919) 865-7010
kelly.dagger@elliswinters.com

Mark P. Gimbel (special appearance forthcoming)
David Z. Pinsky (special appearance forthcoming)
COVINGTON & BURLING LLP
The New York Times Building 620 Eighth Avenue
New York, New York 10018
Telephone: (919) 841-1000
Facsimile: (626) 441-9137
mgimbel@cov.com
dpinsky@cov.com

Counsel for Applicant Novo Nordisk A/S

Andrew K. McVey
MURCHISON, TAYLOR & GIBSON PLLC
1979 Eastwood Road, Suite 101
Wilmington, North Carolina 28403
Telephone: (910) 218-7241
Facsimile: (910) 763-6561
AMcvey@murchisontaylor.com

Counsel for Dr. James McCabe

/s/ James P. McLoughlin, Jr.
James P. McLoughlin, Jr.
N.C. Bar No. 13795
Josh Lanning
N.C. Bar. No. 38858
Rashaad Hamilton
N.C. Bar. No. 58275
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Telephone: (704) 331-1054
Facsimile: (704) 331-1159
jimmcloughlin@mvalaw.com
Local Civil Rule 83.1(d) Attorney

Elizabeth A. Hellmann (admitted via *special appearance*)
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
One Manhattan West
New York, N.Y. 10001-8602
Telephone: (212) 735-3000
betsy.hellmann@skadden.com

Attorneys for Intervenor KBP Biosciences Pte. Ltd.